Filed for intro on 01/22/2004

SENATE BILL 2828
By Herron

AN ACT to amend Tennessee Code Annotated, Title 56, relative to pharmacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-7-2359, is amended by deleting the section in its entirety and by substituting instead the following:

(a) No entity may:

(1) Deny any licensed pharmacy or licensed pharmacist the right to participate as a participating provider in any policy, contract, or plan at the same reimbursement rate and on the same terms and conditions related to costs as are offered to any other provider of pharmacy services under the policy, contract, or plan; provided, that nothing herein shall prohibit an entity from establishing rates or fees that may be higher in nonurban areas, or in specific instances where an entity determines it necessary to contract with a particular provider in order to meet network adequacy standards or patient care needs.

(2) Prevent any person who is a party to or beneficiary of any policy, contract, or plan from selecting a licensed pharmacy of such person's choice to furnish the pharmaceutical services offered under any contract, policy, or plan; provided the pharmacy is a participating provider under the same terms and conditions of the contract, policy, or plan as those offered any other provider of pharmacy services.

(b) Notwithstanding any provision of this chapter to the contrary, an entity may restrict an abusive or heavy utilizer of pharmacy services to a single pharmacy provider for nonemergency services, so long as the individual to be restricted has been afforded the opportunity to participate in the process of selection of the pharmacy to be used, or

has been given the right to change the pharmacy to be used to another participating provider of pharmacy services prior to such restriction becoming effective. After a restriction is effective, the individual so restricted shall have the right to change a pharmacy assignment based on geographic changes in residence or if the member's needs cannot be met by the currently assigned pharmacy provider.

(c) If an entity revises its drug formulary to remove a drug from a previously approved formulary, the entity shall allow a subscriber or enrollee an opportunity to file a grievance relative to the decision to remove such drug. The grievance must be filed within sixty (60) days after notification to the provider that the drug is being removed. If the grievance is filed with an entity within ten (10) days after the subscriber or enrollee knows or should have known that the drug is being removed, the subscriber or enrollee may continue to receive the drug that is being removed from the formulary until the entity completes the grievance process. The provisions of this subsection shall not apply to any drug removed from a previously approved formulary when the reason for such removal is due to patient care concerns or other potentially detrimental effects of the drug. Nothing contained in this section shall be construed or interpreted as applying to the TennCare programs administered pursuant to the waivers approved by the United States department of health and human services.

(d) Each entity shall apply the same coinsurance, co-payment, deductible, and quantity limit factors within the same employee group and other plan-sponsored group to all drug prescriptions filled by any licensed pharmacy provider, whether by a retail provider or a mail service provider; provided, that all pharmacy providers comply with the same terms and conditions. Nothing in this section shall be construed to prohibit the entity from applying different co-insurance, copayment, and deductible factors within the same employer group and other plan-sponsored group between generic and brand-name drugs nor prohibit an employer or other plan-sponsored group from offering multiple options or choices of health insurance benefit plans including, but not limited to, cafeteria benefit plans.

(e) For purposes of this section, an "entity" includes a health insurance issuer as such term is defined in § 56-7-2802(16), a managed care insurance issuer as such term is defined in § 56-32-228(a), an employee welfare benefit plan as such term is defined in 29 U.S.C.#§ 1002, any insurance company, a hospital service corporation, a hospital and medical service corporation, a medical service corporation, a health maintenance organization, a healthcare center, the state or its political subdivisions, prepaid plans, and all other corporations, entities, or persons, including a natural person.

(f) For purposes of this section, a "person" includes a natural person, an individual, the state or its political subdivisions, corporation, partnership, trust, estate, an incorporated or unincorporated association, and any other legal or commercial entity however organized.

SECTION 2. This act shall take effect on becoming a law, the public welfare requiring it